

PT 95-64

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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SINSINAWA DOMINICANS, INC.      )  
    Applicant                    )   Docket #   93-16-1101  
                                )   Parcel Index # 15-20-417-141-0000  
                                )   (Cook County)  
                                )  
                                )  
    v.                            )  
                                )  
THE DEPARTMENT OF REVENUE       )   George H. Nafziger  
OF THE STATE OF ILLINOIS       )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Bernadine Karge appeared on behalf of the Sinsinawa Dominicans, Inc. (hereinafter referred to as the "applicant").

SYNOPSIS: The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on June 5, 1995, to determine whether or not all, or part of, Cook County parcel No. 15-20-417-141-0000 should be exempt from real estate tax for all, or part of, the 1993 assessment year.

Sister Monica Brown, O.P., Vicareess Provincial of the Eastern Province of the applicant was present, and testified on behalf of the applicant.

The issues in this matter include whether or not the applicant is a religious organization. Another issue is whether the applicant owned this parcel and the buildings thereon, during all, or part of, the 1993 assessment year. The final issue is whether the applicant used all, or part of, this parcel and the buildings thereon for religious or convent purposes during all, or part of, the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization. It is also determined that the applicant owned the parcel here in issue and the two-story brick apartment building and four-car garage located thereon, during

the period November 2, 1993, through December 31, 1993. Finally, it is determined that the applicant used one of the apartments and one of the garages for religious or convent purposes, during the period November 2, 1993, through December 31, 1993.

FINDINGS OF FACT:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel here in issue and the buildings thereon, did not qualify for exemption during the 1993 assessment year, was established by the admission in evidence of Department's Exhibits 1 through 6B.

2. On May 2, 1994, the Cook County Board of Appeals forwarded an Application for Property Tax Exemption To Board of Appeals, concerning the parcel here in issue and the buildings thereon, for the 1993 assessment year, to the Department (Dept. Ex. No. 2).

3. On November 3, 1994, the Department notified the applicant that it was denying the exemption of the parcel here in issue and the buildings thereon, for the 1993 assessment year (Dept. Ex. No. 3).

4. The applicant's attorney then requested a formal hearing in this matter (Dept. Ex. No. 4).

5. The hearing held in this matter on June 5, 1995, was held pursuant to that request.

6. The applicant's Restated Articles of Incorporation filed, in the State of Wisconsin, set forth the purposes of the applicant as follows:

"...to own, acquire, establish, conduct, operate, manage, control and alienate educational, religious, charitable, and benevolent institutions, including residences for the formation, education and apostolic work of the Sinsinawa Dominican Congregation of the Most Holy Rosary. The corporation may engage in any lawful activity within the purposes for which a corporation may be organized in the State of Wisconsin."

7. The applicant is primarily an order of teaching nuns. The applicant has been active in the Chicago area since before the great

Chicago fire.

8. Members of this order have been teachers in Roman Catholic grade schools, high schools, and colleges in the Chicago area.

9. The members of the applicant have all taken a vow of poverty, and have agreed to live in community. They are required by their vows to pray and study together.

10. Traditionally, the members of the applicant have lived in convents in the parishes, where the schools in which they taught, were located.

11. However, the parishes have been reclaiming the former convents for use in parish ministry. Consequently, since this order of nuns is required to live in community, they have been forced to find nontraditional housing.

12. The parcel here in issue was acquired by the applicant on November 2, 1993.

13. This parcel was improved with a two-story brick apartment building with a full basement.

14. During 1993, the first floor and the second floor each contained two three-bedroom apartments. The basement contained laundry facilities, and an enclosed storage area for each apartment.

15. Also, located on this parcel was a four-car garage. The spaces in the garage were each assigned to a particular apartment.

16. When the applicant acquired this parcel on November 2, 1993, two nuns who were members of the applicant, resided in unit 2W of the building on this parcel.

17. Those nuns were Sister Deborah Bomyea, a teacher at Trinity High School, a Roman Catholic High School, and Sister Ruella Bouchonville, an art instructor at Harper College, DuPage College and Rosary College, a Roman Catholic College.

18. Those two nuns continued to reside in that apartment through December 31, 1993.

19. Units 2E and 1W were rented to a couple in one case, and an individual in the other, during the period November 2, 1993, through December 31, 1993. Those two units were occupied by holdover tenants from the former owner. Their rent remained the same, and they paid their rent to the applicant.

20. During the period, November 2, 1993, through December 31, 1993, Unit 1E was vacant, and not used.

21. By July 1, 1994, all four apartments were each occupied by two nuns, all of whom were members of the applicant.

22. Based on the foregoing, I find that the applicant is an order of Roman Catholic, teaching nuns.

23. The applicant owned the parcel here in issue, and the two-story brick apartment building, and the four-car garage located thereon, during the period November 2, 1993, through December 31, 1993.

24. During the period November 2, 1993, through December 31, 1993, apartment 2W was occupied by two nuns, as their convent.

25. Those two nuns had taken a vow of poverty, and were required by the applicant to live in community, and to study and to pray together.

26. Those two nuns had no ownership interest in this parcel, or the buildings thereon.

27. The tenants in Apartments 2E and 1W, during the period November 2, 1993, through December 31, 1993, were holdover tenants, with no relation to the applicant, who paid rent to the applicant.

28. During the period November 2, 1993, through December 31, 1993, Apartment 1E was vacant and unused.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and

charitable purposes."

35 ILCS 205/19.2 exempts certain property from taxation in part as follows:

"All property used exclusively for religious purposes, or used exclusively for school and religious purposes, ...and not leased or otherwise used with a view to profit, including all such property owned by churches or religious institutions...and used in conjunction therewith as parsonages or other housing facilities provided for ministers...their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery shall be considered for purposes of this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in such parsonage, convent or monastery."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

In the case of *McKenzie v. Johnson*, 98 Ill.2d 87 (1983), the Illinois Supreme Court held that the parsonage exemption set forth above, was constitutional.

Based on the foregoing, I conclude that the applicant is a religious organization, and that it owned the parcel here in issue and the buildings thereon, during the period November 2, 1993, through December 31, 1993. I also conclude that Apartment 2W was used by the applicant as a convent for

two nuns during the period November 2, 1993, through December 31, 1993.

It should be noted that the Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the net income is used for exempt purposes. *People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136 (1924). See also *The Salvation Army v. Department of Revenue*, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit, or sustains a loss. *Turnverein "Lincoln" v. Board of Appeals*, 358 Ill. 135 (1934). Consequently, I conclude that Apartments 2E and 1W, which were rented to holdover tenants during the period November 2, 1993, through December 31, 1993, did not qualify for exemption during that period.

In the case of *People ex rel. Pearsall v. The Catholic Bishop of Chicago*, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt. In the case of *Antioch Missionary Baptist Church v. Rosewell*, 119 Ill.App.3d 981 (1st Dist. 1983), the Court held that property which was vacant and not used, did not qualify for the statutory exemption as property used exclusively for religious purposes, regardless of the owner's intent. I therefore conclude that Apartment 1E, which was vacant and not used during the period November 2, 1993, through December 31, 1993, did not qualify for exemption.

I therefore recommend that 25% of Cook County parcel No. 15-20-417-141-0000 and 25% of the two-story brick apartment building, and also 25% of the garage located thereon, be exempt from real estate tax for 16% of the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

August , 1995